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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 429

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, *Petitioner*,

v.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY and SPECIAL BOARD OF ADJUSTMENT No. 605, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes (Brotherhood) prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in Case No. 17184 on May 9, 1969, affirming a judgment of the United States District Court for the Northern District of Eastern Illinois which found that federal courts do not possess jurisdiction to review the lawfulness of awards issued by special boards of adjustment created under the Railway Labor Act to

resolve disputes arising out of the interpretation and application of collective bargaining agreements.

The Court of Appeals' decision establishes a rule that judicial review within the restricted limits permitted of awards made by the National Railroad Adjustment Board and arbitration awards generally is not available as to similar awards made by special boards of adjustment created under that Act to obtain expedition in the settlement of such disputes, as Congress and this Court have found should be provided.

OPINIONS BELOW

The opinion of the Court of Appeals printed in Appendix C hereto is not yet reported. The memorandum and order of the District Court granting summary judgment to the respondent The Atchison, Topeka & Santa Fe Railway Company (Santa Fe) is reported at 286 F. Supp. 397 and is reproduced in Appendix D hereto.[1]

JURISDICTION

The judgment of the Court of Appeals was entered on May 9, 1969 (Appendix B hereto). The jurisdiction of this Court is invoked under Title 28 U.S.C.A., Section 1254.

QUESTIONS PRESENTED

In the opinion of the Petitioner the following questions are presented:

1. Do the United States District Courts possess jurisdiction under Section 3, First (q) of the Railway Labor Act to review the lawfulness of awards issued by special boards of adjustment established pursuant to the provisions of that Act?

---

[1] Special Board of Adjustment No. 605, named as a respondent, did not participate in the litigation and is not an indispensable party.

2. Do United States District Courts possess jurisdiction under Sections 1331 and 1337 of the Judicial Code to review, within the limits set forth in Section 3, First (q) of the Railway Labor Act, the lawfulness of awards issued by such special boards of adjustment?

3. Assuming that the Court finds that the District Courts have jurisdiction under either of the above statutes to review such awards, was the award issued by Special Board of Adjustment No. 605 entered in excess of its jurisdiction within the meaning of Section 3, First (q) of the Railway Labor Act?

STATUTES INVOLVED

Statutory provisions involved are Section 3, First (p) and (q), Section 3, Second of the Railway Labor Act, and Sections 1331 and 1337 of the Judicial Code. These statutory provisions are set forth in full in Appendix A hereto.

STATEMENT OF THE CASE

The Brotherhood's petition to the lower court for judicial review of an award issued by Special Board of Adjustment No. 605 sought a decision that, contrary to the provisions of the Railway Labor Act, the Special Board had exceeded the scope of its jurisdiction in reaching the decision on the dispute submitted to it. The Brotherhood disclaimed any prayer for a review of and a ruling on the merits of the underlying controversy by the lower court.

Summary judgment was granted in favor of the defendant Santa Fe on a finding by the District Court, 286 F. Supp. 397, 398, that it did not have jurisdiction to review an award made by a special board of adjustment created under the Act even if that board

had exceeded its own jurisdiction.[2] The Brotherhood's motion for a new trial was denied on July 15, 1968. Oral argument thereon was refused by the District Court.

The Court of Appeals affirmed the judgment of the District Court on the issue of that Court's jurisdiction, and noted that its decision was consistent with the national labor policy of avoiding court review of the "merits" of arbitration awards under collective bargaining agreements.

The Brotherhood is the collective bargaining representative of certain individuals who have been employed for a number of years beginning in 1937 in the loading and unloading of freight, described as "dock work"; for National Car Loading Corporation (National) in the Chicago, Illinois area. Some of these individuals performed this work for the account of National when they became employees of Chicago & North Western Railway Company (C&NW) during a period beginning in 1944 when that railroad had a contract with National to perform the described work at a location on the lines of that railroad. Some of the same individuals continued to perform similar work as employees of the Santa Fe subsequent to a transfer of

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[2] The District Court, after so ruling, briefly discussed the issue presented to the limited extent possible based on the pleadings then before it, and stated that "even if this Court were to find jurisdiction, the limited scope of review over awards made by the National Railroad Adjustment Board would preclude review of this case." The District Court's ultimate ruling, after its receipt of the Brotherhood's motion for a new trial, to which was attached in support thereof a Motion for Judgment on the Pleadings or Summary Judgment and supporting memorandum, was that there was no Federal jurisdiction to review awards of special boards of adjustment created under the Railway Labor Act. 286 F. Supp. 397, 398.

the work from the C&NW to the Santa Fe pursuant to a contract entered into between the Santa Fe and National in February 1957. Some of the individuals involved continued to perform similar work directly for National when in the latter part of 1965 National undertook to perform the work on its own behalf without the use of Santa Fe facilities. Some of the Santa Fe employees who had performed these duties were not employed by National at or subsequent to August 1965 when it undertook to perform the work directly for its own account.

The Brotherhood and Santa Fe are parties to a collective bargaining agreement negotiated under the Railway Labor Act and entered into on February 7, 1965 (Exhibit 2 to Pet.) which provides certain job stabilization benefits for Santa Fe employees. Pursuant to the terms of the agreement, the Brotherhood made demands on the Santa Fe for the application of such benefits for those Santa Fe employees who failed subsequent to 1965 to secure positions with National for the continued performance of its dock work. Santa Fe refused to honor the provisions of the agreement.

Article VII of the said 1965 job stabilization agreement (Exh. 2, p. 8) provides for the resolution of disputes arising as to the interpretation and application of the provisions of that agreement by recourse to a disputes committee established in accordance with specific terms of the agreement. Such a disputes committee was created and has been classified as Special Board of Adjustment No. 605 by the National Mediation Board in accordance with the provisions of the Railway Labor Act (Exh. 5 to Pet.)

Section 3 of Article VII of the agreement *inter alia* provides that a notice in writing submitting a dispute

to the committee [Special Board] "shall state specifically the questions to be submitted to the committee [Board] for decision; and the committee [Board] shall confine itself strictly to decisions as to the questions so specifically submitted to it."

The dispute as to job stabilization benefits to those individuals who as Santa Fe employees performed the dock work for National but who were not employed by National when it undertook to perform the work directly for its own account was submitted to the Special Board by the Brotherhood by a notice filed on February 11, 1966.

In its submission the Brotherhood framed the specific questions to be answered by the Special Board as follows:

> (1) Are Santa Fe employees with a seniority date of October 1, 1962, and earlier, who prior to August 1, 1965, were engaged in the handling of National Carloading Corporation freight at the Corwith House #1, Chicago, Illinois, entitled to protection under the February 7, 1965 Stabilization Agreement?
>
> (2) If so, shall employees qualifying for protection thereunder be returned to the payroll of the Santa Fe and compensated according to the provisions of Article IV of the February 7, 1965 Stabilization Agreement?

As shown by the award (Exh. 6 to Pet.), the Special Board did not undertake to resolve the questions submitted to it by the Brotherhood but instead undertook to determine what it conceived to be, and characterized as, the "real issue", to wit: Whether those members

of the Brotherhood described in Question (1) as "Santa Fe employees" were properly to be treated as "employees" within the meaning of the job stabilization agreement. The award (Ex. 6 to Pet.) shows that the Special Board "conceived" and characterized as the "real issue" in the dispute before it to be:

> Whether the group of persons described in Question (1) as "Santa Fe employees" may properly be treated *at this time* as "employees" within the meaning, intent and application of Section 1 of Article I of the National Agreement. (Emphasis supplied.)

In adjudicating this question, the Special Board found that the employees involved did not possess an employment relationship with Santa Fe after August 1, 1965, and used this as a basis for its negative ruling on the questions specifically submitted.

In its adjudication of this separate and unrelated question, the Special Board relied on an interim order of the United States District Court in a separate and unrelated proceeding. The failure of the Special Board to decide the questions specifically submitted to it, its framing of a separate question, and its decision thereon constituted actions outside the competency and jurisdiction of the Special Board and as such invalid under Section 3, First (q), of the Act, 45 U.S.C.A. 153, First (q).

The agreement provided (Art. I, Sec. 1, p. 1 of Exh. 2 to Pet.) that its benefits would be extended to Santa Fe employees:

> . . . who were in active service as of October 1, 1964 . . . and who had two or more years service subject to compensation as of October 1, 1964 will

be retained in service subject to compensation as hereinafter provided unless or until retired, discharged for cause, or otherwise removed by natural attrition.

The record before the Special Board shows that in its submission to the Board Santa Fe urged that the "real issue" in the dispute was whether the "individuals involved are *now* Santa Fe employees" (Joint App. Item C, pp. 8, emphasis added). Santa Fe contended that the Special Board had no jurisdiction to determine that question because its resolution required an interpretation of the so-called tri-partite agreement previously entered into by Santa Fe, National and the Brotherhood on February 5, 1957. Accordingly, the Santa Fe requested the Special Board to dismiss the dispute, or hold it in abeyance until the proper tribunal could decide the question of the employment status of the employees involved. (*Ibid,* pp. 9-10).

Coincident with its announced intention to perform its own dock work without use of Santa Fe facilities and employees, National stated that any additional employees needed would be newly hired and become employees of its subsidiary Panda Terminals, Inc., without retention of seniority and other rights and benefits obtained by past performance of the work as employees of Santa Fe and C&NW,[3] and would be covered by an employment contract between the International Brotherhood of Teamsters (Teamsters) and Panda.

Threatened with the loss of its representation of these employees and the loss by such employees of their

[3] As found by United States District Judge Perry in his Findings of Fact, etc., in Civil Action No. 65—C-1199, hereinafter referred to as Judge Perry's interim order (Joint Appendix, Item C, Exhibit C).

seniority and other existing rights and benefits, the Brotherhood instituted in July 1965, an action, No. 65-C-1199 in the United States District Court for the Northern District of Illinois, Eastern Division, against National and its affiliates, seeking an order from the Court directing National, etc., to "take over" employees on the Santa Fe-National roster with seniority and other rights and benefits unimpaired, as National had agreed and was required to do by Section 6 of the tripartite February, 1957 agreement between National, Santa Fe and the Brotherhood.

On August 6, 1965, Judge Perry issued an order granting, as sought by the Brotherhood, a preliminary injunction (Judge Perry interim order, pp. 9-12) enjoining National, etc., from reducing to new employees status and/or withdrawing seniority rights from employees named on the National-Santa Fe seniority roster, employing new employees for the performance of the involved work until all such employees had been employed by National, and the application of the Teamsters contract to such employees.

The Special Board found that the described order of Judge Perry judicially determined that the "employment status" of the employees involved had been shifted from Santa Fe to National. The Special Board determined that the "main thrust" of the Brotherhood's 1965 case against National was that the Santa Fe employees were entitled as a matter of contractual right to become employees of National. The Special Board found and concluded that the interim order of Judge Perry "constituted a severance of the employment relationship theretofore existing" between Santa Fe and the employees involved, and that such severance barred their inclusion as protected employees under

the February 7, 1965 job stabilization agreement between the Brotherhood and Santa Fe.

In its petition to the District Court seeking review of the award within the limits of Section 3, First (q) of the Railway Labor Act, the Brotherhood urged that the Special Board had failed to confine itself to matters within the scope of its jurisdiction by undertaking to frame a question not specifically before it, decide that question by undertaking to interpret a contract and a judicial order with respect thereto beyond the scope of and irrelevant to the questions presented to it by the Brotherhood in excess of its competence and jurisdiction.

The District Court found no jurisdiction to review in any manner awards issued by special boards of adjustment including questions as to whether such a board had exceeded its own jurisdiction in making the award. The Court of Appeals found no jurisdiction under Section 3, First (q) of the Railway Labor Act because such act permitted judicial review only of awards issued by the divisions of the National Railroad Adjustment Board, and no jurisdiction under Sections 1331 and 1337 of the Judicial Code although the provisions thereof have been interpreted to provide jurisdiction permitting enforcement by the District Courts of awards issued by airline system boards of adjustment. The Court of Appeals distinguished the airline cases on the ground that jurisdiction existed in Federal courts with respect to such awards because air carriers and their employees are required by Section 204 of the Railway Labor Act to establish such system boards for the determination of disputes under their collective bargaining agreements, and the Act contains no requirement for the railroads and their employees to establish special boards of adjustment for similar purposes.

REASONS FOR GRANTING WRIT

The decision of the Court of Appeals presents substantial and important questions as to the interpretation of the Railway Labor Act, as amended in 1966, and its principal objective to provide for the prompt and orderly settlement of disputes arising between the railroads and their employees, and the maintenance of stable labor relations. The rationale of the decision is in conflict with decisions of this Court and other Federal courts on the existence of federal jurisdiction to decide controversies arising under an act to regulate commerce.

I.

THE COURT OF APPEALS' DECISION RAISES SUBSTANTIAL AND IMPORTANT QUESTIONS OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT

A. The Decision Raises Substantial and Important Questions of Federal Law With Regard to Settlement of Disputes Involving the Interpretation of Collective Bargaining Agreements Between the Railroads and Their Employees.

This Court has heretofore interpreted the Railway Labor Act as establishing a statutory scheme for final and binding determination by adjustment boards of employee grievances and disputes concerning the interpretation of collective bargaining agreements. *Brotherhood of Railroad Trainmen* v. *Chicago River and Indiana R. Co.*, 353 U.S. 30; *Slocum* v. *Delaware, Lackawanna & Western R. Co.*, 339 U.S. 239. Although prior decisions of this Court have made it clear that the Adjustment Board procedures are to be considered as compulsory arbitration in a limited field, constituting the complete and final means for settling minor disputes, and not permitting a federal district court to review an Adjustment Board's determination of the "merits" of a grievance, *Gunther* v. *San Diego*

and Arizona Eastern R. Co., 382 U.S. 257, the statute has been recognized as providing for limited judicial review of an award in favor of an employee when his employing carrier declines to comply with it. *Walker* v. *Southern R. Co.*, 385 U.S. 196.

In *Walker* (at page 198) the Court found also that Congress in enacting 1966 amendments to the Act, had drastically revised the procedures under the Act so as to provide for limited judicial review of awards by aggrieved employees, and the use of "special boards of adjustment" in an attempt to eliminate the backlog of cases before the National Railroad Adjustment Board causing employees to wait as long as ten years or more before decisions can be rendered on their claims.

Under the decision of the Court of Appeals the right of an employee aggrieved by an award to obtain limited judicial review, granted by the amendments to the Act made by Public Law 89-456, 80 Stat. 208, effective June 20, 1966, is available only with respect to awards issued by the divisions of the National Railroad Adjustment Board. The decision holds that judicial review is not available with respect to awards issued by special boards of adjustment established to provide for expeditious hearings on similar disputes, which railway employees are entitled to have, *Transportation-Communication Employees Union* v. *Union Pacific Railroad Company*, 358 U.S. 157, 162, and which the Act authorizes to be established, Section 3, Second, 45 U.S.C.A. 153, Second.

The decision of the Court of Appeals frustrates the intent of Congress to provide for resort to supplemental boards of adjustment for resolution of minor disputes otherwise referable to the National Railroad

Adjustment Board so as to relieve the backlog of cases before its divisions, and to eliminate the "unfair" and "incongruous" application of the Act prior to the amendments not permitting an employee aggrieved by an award to obtain a judicial determination of its validity. 2 Congressional and Administrative News (1966), page 2285. Compare *Southern Pacific Company* v. *Wilson*, (5th Cir. 1957) 378 F.2d 533.

The decision of the Court of Appeals that Special Board of Adjustment No. 605 is solely a product of a contract between private parties and only a "common law board of arbitration" established by parties otherwise subject to provisions of the Act, is contrary to the ruling of this Court in *T-C Employees Union, supra,* at pages 160-161; *Railway Employes' Department* v. *Hanson,* 351 U.S. 225, and other relevant decisions of this Court and other federal courts.

B. The Decision of the Court of Appeals Conflicts With Decisions of This Court and Other Federal Courts.

The decision of the Court of Appeals holds that jurisdiction to judicially review the involved award within the limits of Section 3, First (q) of the Act, is not available under Sections 1331 and 1337 of the Judicial Code. In *International Association of Machinists* v. *Central Airlines, Inc.,* 372 U.S. 682, this Court stated that although the Railway Labor Act did not specifically provide for judicial enforcement of awards issued by airline system boards of adjustment, there was no reason to believe that Congress discarded for an entire industry an element essential to a reliable system of settling disputs under existing contracts, or that it contemplated awards by adjustment boards the enforceability of which depended entirely upon the desires of the parties or upon state statutes or court decisions.

Contrary to the view of the Court of Appeals that the Special Board of Adjustment No. 605 is a common law board of arbitration created by a contract between private parties, this Court stated (at pages 692-695) in *Machinists* that the status of boards of adjustment created under the Act and the reviewability of their decisions are questions controlled by federal law.

In like fashion, the National Mediation Board (at pages 49-50) in its 32nd annual report for the fiscal year ending June 30, 1966, tacitly recognized, as it had in previous similar reports, the status of special boards of adjustment as being adjudicating bodies created under the Act for the prompt resolution of minor disputes which otherwise would be handled by divisions of the National Railroad Adjustment Board.[4]

The Court of Appeals' decision is also in conflict with the decisions in the following cases: *Northwest Airlines, Inc.* v. *Air Line Pilots Association,* (8th Cir. 1967), 373 F.2d 136; *Southern Pacific Company* v. *Wilson,* (5th Cir. 1967), 378 F.2d 533; *Bro. of Railroad Trainmen* v. *Denver & Rio Grande W.,* (10th Cir. 1967), 370 F.2d 833, *cert. denied,* 386 U.S. 1018; *Domingues* v. *National Airlines, Inc.,* (S.D. N.Y. 1968), 279 F. Supp. 392; *Bro. of Loco. Eng.* v. *Rio*

[4] The National Mediation Board, in describing the creation and function of railroad special boards of adjustment generally since 1957, has characterized them as an effective method for expediting the disposition of disputes through an adaptation of the grievance function of the divisions of the National Railroad Adjustment Board, and as a means for reducing the backlog of cases pending before the divisions.

Grande, (D.C. Colo. 1968), 290 F. Supp. 612, affirmed —— F.2d ——, 71 LRRM 2691 (June 19, 1969); *Transportation-Communication Employees Union* v. *St. Louis-San Francisco Ry. Co.,* (E.D. Mo. 1968), 296 F. Supp. 507.

II.

THE AWARD IS INVALID BECAUSE OF THE FAILURE OF THE SPECIAL BOARD TO CONFINE ITSELF TO MATTERS WITHIN ITS JURISDICTION.

The opinion of the Court of Appeals discloses its concentration on the issue of jurisdiction to review the award and furnishes only conclusory statements relating to the Brotherhood's contentions as to the invalidity of the award. The finding by the Court that Special Board No. 605 considered the questions submitted to it by the Brotherhood and concluded:

> from the two agreements presented, the tripartite agreement [of February 5, 1957] and the February 7 Agreement, that employment of the bargaining unit had shifted from Santa Fe to National when National took back its freight handling work. Thus it found that the employees were not "protected employees" within the meaning of the February 7 Agreement and were not entitled to benefits.

The questions submitted by the Brotherhood to the Special Board were designed to obtain a decision whether the employees who had performed the dock work as Santa Fé employees were entitled to the benefits of the February 7, 1965 job stabilization agreement when they were unable to "follow the work" and con-

tinue to perform their same duties as employees of National.

Judicial articulation since the amendment of the Act providing for limiting judicial review of adjustment board awards has not furnished any authoritative exposition of the legal significance of its specific provisions. The legislative history of the amendments shows, however, that "the limited grounds for judicial review provided in H.R. 706 are the same grounds that are provided in Section 9 of the Railway Labor Act and also Public Law 88-108, which provided arbitration for the so-called work rules dispute."

Section 3 of the Article VII of the February 7, 1965 agreement (Exhibit 2, p. 9, to Pet.) in like fashion as Section 8 (e) of the Railway Labor Act, 45 U.S.C.A. 158(e), relating to voluntary arbitration of disputes, provides that a notice in writing submitted to the Disputes Committees (Special Board) "shall state specifically the question to be submitted to the Committee [Special Board] for decision; and the Committee [Special Board] shall confine itself to decisions as to the questions so specifically submitted to it."

Section 9, Third (b) of the Act, 45 U.S.C.A. 159, Third (b), also relating to voluntary arbitration, in like fashion to Section 3, First (q) of the Act, 45 U.S.C.A. 153. First (q), provides that an award may be set aside (impeached) on the grounds that the award does not confine itself to the provisions of the agreement to arbitrate.

The finding by the Court of Appeals that the Special Board decision was based upon the "two" collective bargaining agreements presented, evidences the aware-

ness of that court that the Special Board did not confine its decision to the provisions of the February 7, 1965 agreement as to which alone it possessed jurisdiction to resolve disputes. The Santa Fe, which was the beneficiary of the award, itself, while before the Special Board, contended that the Special Board had no jurisdiction to arbitrate a dispute which could only be resolved by an interpretation of the 1957 tripartite agreement not properly before the Special Board, and not within its granted scope of jurisdiction.

Whether the award of the Special Board is viewed as a decision based on an interpretation of the provisions of "two agreements" as found by the Court of Appeals, or as a decision based on an interpretation of an interim judicial order entered in litigation involving unrelated issues, it is shown that the Special Board failed to confine itself to matters within its jurisdiction.

The erroneous and excessive departure by the Special Board from the scope of its jurisdiction is shown to have resulted from the Special Board's undertaking to frame and decide a question not "specifically submitted" to it. Obviously, if the Special Board believed that the questions submitted to it could not be resolved by recourse to the provisions of the February 7, 1965 agreement, it should have refused to decide the dispute. Clearly also, the Special Board had no authority to formulate a different dispute not determinable by an interpretation of the provisions of the Agreement by which the Special Board's jurisdiction was established.

The decision of the Court of Appeals when evaluated by the principles of relevant decisions under statutes containing similar limits of jurisdiction for arbitration

boards is shown to be patently unlawful. These decisions show that the Special Board functioning in the limited arena of an arbitration tribunal cannot be permitted the latitude to change the nature of the dispute submitted to it by adding to the questions presented, by creating an issue which cannot be decided by provisions of the basic agreement, resolve the added issue by interpreting a decision made in an unrelated dispute under an unrelated agreement as to which the Board had no jurisdiction, and use its decision on the added issue as the basis for its decision on the questions properly before it.

The action of the Special Board conflicts with the rule that an arbitrator has no authority to depart from the provisions of the agreement he is called upon to arbitrate, *United States* v. *Enterprise Wheel Corp.*, 363 U.S. 593; with the rule that a claim which "on its face" is not governed by the agreement is not properly subject to arbitration; *John Wiley & Sons, Inc.* v. *Livingston*, 376 U.S. 543; and with the host of decisions that an arbitrator has no authority to "add" provisions to an agreement as to which he has jurisdiction to act, to add to the questions submitted for arbitration, or to dispense his own brand of industrial justice as a free agent. *Torrington Co.* v. *Metal Products Workers*, (2nd Cir. 1966), 362 F.2d 677; *Amalgamated Clothing Workers* v. *Iron All Factories Co.*, (6th Cir. 1967), 386 F.2d 586; *IAM* v. *Hays Corp.*, (5th Cir. 1961), 296 F.2d 238; *H. K. Porter Co., Inc.* v. *United Saw and File Products Workers*, (3rd Cir. 1964), 333 F.2d 596.

On its face, the "real issue" framed and added by the Special Board was not, as shown by the award and by the decision of the Court of Appeals, capable of reso-

lution by interpretation of the provisions of the 1965 job stabilization agreement. Judge Perry's order granting interim relief, which was interpreted by the Special Board, cannot be considered as a substantive decision interpreting the 1967 tripartite agreement and resolving a dispute thereunder as to which neither the District Court nor the Special Board possessed jurisdiction to undertake. *Brotherhood of Loco. Eng.* v. *Mo.-Kansas-Texas R.R.*, 363 U.S. 528.

The statement by the Court of Appeals that its decision is consistent with the national labor policy of avoiding court review of the "merits" of arbitration awards misses the mark and warrants the conclusion that the court did not comprehend the issue presented by the Brotherhood's petition for judicial review, or the scope of review permitted under the Act. The employment rights and benefits provided by the 1965 job stabilization agreement for the employees covered are entitled to the limited protection afforded by the Act requiring that in the determination of disputes as to the measure of such rights and benefits that the Adjustment Board confine the award to questions within its jurisdiction.

The decision of the Court of Appeals, if not set aside, will constitute a harmful judicial interpretation of the substance of the 1966 amendments to the Act which permit for the first time employees aggrieved by awards issued in resolution of minor disputes to obtain judicial review within limited compass.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

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APPENDIX A

Statutes Involved

Railway Labor Act:

Section 3, First (p) and (q) and Section 3, Second of the Railway Labor Act, 45 U.S.C.A. 153, First (p), (q) and 153, Second:

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board: *Provided, however,* That such order may not be set aside except for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within

the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

(q) If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall file in the court the record of the proceedings on which it based its action. The court shall have jurisdiction to affirm the order of the division or to set it aside, in whole or in part, or it may remand the proceeding to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of title 28, United States Code.

Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of

adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

If written request is made upon any individual carrier by the representative of any craft or class of employees of such carrier for the establishment of a special board of adjustment to resolve disputes otherwise referable to the Adjustment Board, or any dispute which has been pending before the Adjustment Board for twelve months from the date the dispute (claim) is received by the Board, or if any carrier makes such a request upon any such representative, the carrier or the representative upon whom such request is made shall join in an agreement establishing such a board within thirty days from the date such request is made. The cases which may be considered by such board shall be defined in the agreement establishing it. Such board shall consist of one person designated by the carrier and one person designated by the representative of the employees. If such carrier or such representative fails to agree upon the establishment of such a board as provided herein, or to exercise its rights to designate a member of the board, the carrier or representative making the request for the establishment of the special board may request the Mediation Board to designate a member of the special board on behalf of the carrier or representative upon whom such request was made. Upon receipt of a request for such designation the Mediation Board shall promptly make such designation and shall select an individual associated in interest with the carrier or representative he is to represent, who, with the member appointed by the carrier or representative requesting the establishment of the special board, shall constitute the board. Each member of the board shall be compensated by the party he is to represent. The members of the board so designated shall determine all matters not previously agreed upon by the carrier and the representative of the employees with respect to the establishment and jurisdiction of the board. If they are unable

to agree such matters shall be determined by a neutral member of the board selected or appointed and compensated in the same manner as is hereinafter provided with respect to situations where the members of the board are unable to agree upon an award. Such neutral member shall cease to be a member of the board when he has determined such matters. If with respect to any dispute or group of disputes the members of the board designated by the carrier and the representative are unable to agree upon an award disposing of the dispute or group of disputes they shall by mutual agreement select a neutral person to be a member of the board for the consideration and disposition of such dispute or group of disputes. In the event the member of the board designated by the parties are unable, within ten days after their failure to agree upon the award, to agree upon the selection of such neutral person, either member of the board may request the Mediation Board to appoint such neutral person and upon receipt of such request the Mediation Board shall promptly make such appointment. The neutral person so selected or appointed shall be compensated and reimbursed for expenses by the Mediation Board. Any two members of the board shall be competent to render an award. Such awards shall be final and binding upon both parties to the dispute and if in favor of the petitioner, shall direct the other party to comply therewith on or before the day named. Compliance with such awards shall be enforceable by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board.[4]

Judicial Code:

Sections 1331 and 1337, 28 U.S.C.A. 1331, 1337

§ 1331

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy ex-

ceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

(b) Except when express provisions therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff. As amended July 25, 1958, Pub. L. 85-554, § 1, 72 Stat. 415.

§ 1337—

The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

APPENDIX B

Judgment

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Chicago, Illinois 60604

Thursday, May 8, 1969

Before

HON. F. RYAN DUFFY, Senior Circuit Judge

HON. ROGER J. KILEY, Circuit Judge

HON. LUTHER M. SWYGERT, Circuit Judge

No. 17184

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, *Appellant*,

v.

SPECIAL BOARD OF ADJUSTMENT NO. 605, and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, *Appellees*.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the decision of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this day.

APPENDIX C

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

v.

SPECIAL BOARD OF ADJUSTMENT No. 605, and ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, No. 17184, May 8, 1969

Appeal from the U. S. District Court for the Northern District of Illinois. Judgment affirmed.

Before DUFFY, Senior Circuit Judge, and KILEY and SWYGERT, Circuit Judges.

Full Text of Opinion

SWYGERT, Circuit Judge:—This appeal presents the issue whether an award of a board of arbitration created by private agreement between parties subject to the Railway Labor Act is to be accorded judicial review in a federal court on the same basis as provided in the Act for the awards of statutory arbitration boards. In light of our holding with respect to this jurisdictional question, we need not reach the subsidiary issue whether the arbitration award in this case should be set aside.

Petitioner, the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, filed a petition in the district court seeking review of an award of a board of arbitration created by contract and designated Special Board of Adjustment No. 605. The petition alleged that the award had been entered pursuant to the provisions of the Railway Labor Act, 45 U.S.C. §§ 151-188 and that jurisdiction to review was conferred upon the court by Section 3, First (q) of the Act, 45 U.S.C. § 153, First (q).

[LOWER COURT'S RULING]

The district court entered summary judgment in favor of the defendant, The Atchison, Topeka and Santa Fe Railway Company. Brotherhood of Railway Clerks v. Special

Bd. of Adj. No. 605, 286 F. Supp. 397, (N.D. Ill. 1968). The court held that it was without jurisdiction to review the award in question and that even if it had jurisdiction, the pleadings failed to establish any sufficient ground for review.

The controversy which gave rise to the disputed arbitration proceeding grew out of a complicated bargaining history. In July 1944, National Carloading Corporation, a freight forwarder, located its loading operations on a site served by the Chicago and North Western Railway Company. National's employees doing freight handling work were transferred at that time to C&NW's payroll and a C&NW-National joint seniority roster was established which maintained employees' seniority rights with both companies.

Although this arrangement prevailed during the ensuing years, in 1956, after it became known that National contemplated another transfer from the C&NW facility to a warehouse owned by Santa Fe, the Brotherhood demanded that Santa Fe enter into a joint seniority roster agreement similar to that which had been in effect with C&NW. Consequently, Santa Fe, National, and the Brotherhood entered into a tripartite agreement on February 5, 1957 whereby the parties stipulated that the freight handlers then on the C&NW payroll would be transferred to Santa Fe without loss of seniority. The February 5 agreement further provided:

6. The National Carloading Corporation agrees that in the event the work transferred from the C&NW to the Santa Fe is returned to National, the latter will take over the employees then employed by Santa Fe in the combined National-Santa Fe seniority district without loss of their seniority.

Subsequently, the freight handlers on the C&NW payroll were transferred to Santa Fe and performed National's dock work without incident until mid-1965, when National announced that it intended to exercise its right to resume supervision of this work itself on August 1, 1965. Em-

ployees who had been performing National's freight handling were informed that they could submit new employment applications and be considered for employment. When National did not find it necessary to employ all the freight handlers previously carried on the joint Santa Fe-National seniority roster, the Brotherhood claimed that those not employed by Santa Fe and thus entitled to the benefits of an industry-wide job protection agreement which had been executed on February 7, 1965 by the National Railway Labor Conference, Santa Fe's bargaining agent, and the Employees' National Conference Committee, which represented the Brotherhood. On the basis of a provision in the February 7 agreement relating to job stabilization benefits for "protected employees," the Brotherhood asserted that the employees who had not found employment with National were to be retained by Santa Fe in their jobs and protected from loss of earnings "until retired, discharged for cause, or otherwise removed by natural attrition."

Santa Fe contended that its employment relationship with the freight handlers in question had been severed by operation of paragraph 6 of the February 5, 1957 tripartite agreement by virtue of the fact that the dock work involved had been taken back by National and hence the freight handlers were not "protected employees" within the definition of the February 7 agreement.

Because the parties were unable to resolve their dispute, the Brotherhood submitted it to the "Disputes Committee" as provided in the February 7, 1965 Agreement.[1] In its

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[1] Article VII, Section 1 of the February 7 Agreement provides:

Any dispute involving the interpretation or application of any of the terms of this agreement and not settled on the carrier may be referred by either party to the dispute for decision to a committee consisting of two members of the Carriers' Conference Committees signatory to this agreement, two members of the Employees' National Conference Committee signatory to this agreement, and a referee to be selected as hereinafter provided. The referee selected shall preside at the meetings of the committee and act as chairman of the committee. A majority vote of the partisan members of the committee shall be necessary to decide a dispute, pro vided that if such partisan members are unable to reach a decision, the dispute shall be decided by the referee. Decisions so arrived at shall be final and binding upon the parties to the dispute.

submission to the committee created in response to the request, designated "Special Board of Adjustment No. 605," the Brotherhood advanced two specific questions:

(1) Are Santa Fe employees with a seniority date of October 1, 1962 and earlier, who prior to August 1, 1965, were engaged in the handling of National Carloading Corporation freight at the Corwith House # 1, Chicago, Illinois, entitled to protection under the February 7, 1965 Stabilization Agreement?

(2) If so, shall employees qualifying for protection thereunder be returned to the payroll of the Santa Fe and compensated according to the provisions of Article IV of the February 7, 1965 Stabilization Agreement?

Board No. 605 considered the questions and concluded from the two collective bargaining agreements presented, the tripartite agreement and the February 7 Agreement, that employment of the bargaining unit had shifted from Santa Fe to National when National took back its freight handling work. Thus it found that the employees were not "protected employees" within the meaning of the February 7 Agreement and were not entitled to benefits.

[Petition for Review]

Thereafter, the Brotherhood filed a petition for review in the district court which is the subject of this appeal. The district court entered summary judgment for the defendant Santa Fe. We affirm the judgment.

It is our opinion that the district court correctly determined that it did not have jurisdiction to review the claims presented. The first provision of the Railway Labor Act relied upon by the Brotherhood to press its claim of jurisdiction is Section 3, First (q), 45 U.S.C. § 153, First (q). That provision was part of a package of amendments to Section 3 enacted by Congress in 1966. The two basic objectives behind adoption of these amendments were (1) to eliminate the backlog of claims pending before the National

Railroad Adjustment Board, and (2) to provide equal opportunity for limited judicial review of NRAB awards. 1966 U.S. Code Cong. & Admin. News, 2285-86. The part of Section 3, First (q), upon which the Brotherhood relies reads:

> If any employee or group of employees . . . is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award . . . then such employee or group of employees . . . may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. . . . The Court shall have jurisdiction to affirm the order of the division or to set it aside, in whole or in part, or it may remand the proceeding to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

The district court properly concluded that only awards of regular divisions of the NRAB are within the purview of the section and that consequently its jurisdiction to review an award of the "Disputes Committee" created under the Februry 7 Agreement is precluded.

Section 3, Second of the Act, which, in pertinent part, provides for the creation of 'special boards of adjustment" to consider and decide grievance-type disputes which otherwise could be submitted to the NRAB is inapplicable to the instant case. That section, even if otherwise applicable, cannot be the basis of jurisdiction here since it vests au-

thority in the district courts only to enforce but not to review awards of special boards.

The plain wording of Section 3, First (q) relates only to statutory Boards. The Special Adjustment Board No. 605 is not a statutory board at all but solely the product of a contract between private parties. Board No. 605 is a common law board of arbitration established by parties who happened otherwise to be subject to the Act. Not every form of arbitration in the railroad industry is subject to the review provisions of Section 3 of the Railway Labor Act. Even though the creation of Board No. 605 was sanctioned by the Act, it was not a statutory board and therefore not subject to the review of Section 3, First (q).

The second jurisdictional basis proposed is that this cause arises under 28 U.S.C. §§ 1331 and 1337. As authority, petitioner calls our attention to the Supreme Court's decision in International Association of Machinists v. Central Airlines, Inc., 372 U.S. 682 (1963). That this case is inapplicable to the dispute before us is apparent if we keep in mind the fact that Board No. 605 is a contractual and not a statutory board. In Central Airlines, the parties agreed to establish a system board of adjustment to resolve grievance disputes. The Supreme Court, in ruling that awards of an airline system board of adjustment can be enforced in a federal court, made it clear that agreements to submit matters to these boards were not permissible but mandatory. The court observed:

> The parties were placed under the statutory duty of establishing and utilizing system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes arising under existing contracts. Id. at 686.

In the case at bar, neither party was directed by the Act to establish the "Disputes Committee." This committee was created by contract and was not a statutory board like that involved in Central Airlines. For the same reason, the two other cases cited by the Brotherhood involving

statutory boards are inapposite. Northwest Airlines, Inc. v. Air Line Pilots Association, 373 F.2d 136 (8th Cir. 1967), and Dominguez v. National Airlines, Inc., 279 F. Supp. 392 (S.D.N.Y. 1968).

There is no overriding equitable ground for finding a source of jurisdiction here. The result of this case cuts both ways, neither labor organizations nor railroads can petition a federal court to review a private arbitration board's award.

Likewise the decision here is consistent with national labor policy of avoiding court review of the merits of arbitration awards rendered under collective bargaining agreements. United Steelworkers of America v. American Mfg. Co., 363 U.S. 564, 46 LRRM 2414 (1960).

The decision of the district court is affirmed.

APPENDIX D

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES,
Petitioner,

v.

SPECIAL BOARD OF ADJUSTMENT,
No. 605
and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
Respondents.

No. 67 C 1823.

United States District Court
N. D. Illinois, E. D.

June 28, 1968.

Albert Gore, of Jacobs & Gore, Chicago, Ill., Edward J. Hickey, Jr. and Wm. J. Hickey, of Mulholland, Hickey & Lyman, Washington, D. C., William J. Donlon, Gen.

Counsel, Brotherhood of Railway, Airline and Steamship Clerks, Cincinnati, Ohio, for petitioner.

C. George Niebank, Jr., Floyd Stuppi & Robert R. Bateson, Chicago Ill., for respondent Atchison, Topeka and Santa Fe.

MEMORANDUM AND ORDER ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

ROBSON, *District Judge.*

Respondent Santa Fe has moved for summary judgment. This court is of the opinion that the motion should be granted.

The petitioner Union and the respondent Santa Fe were parties to a multilateral mediation agreement entered into on February 7, 1965. This agreement provided that all controversies as to its interpretation and application were to be submitted by either party to a "disputes committee." Under the terms of the agreement, awards made by a "disputes committee" are final and binding.

A dispute arose as to the application of the mediation agreement to a particular group of employees represented by petitioner. Upon petitioner's election to submit the controversy to a "disputes committee," Special Board of Adjustment No. 605 was formed. Petitioner submitted two questions to the Special Board regarding the applicability of the agreement to the particular group of employees at issue. The Special Board answered both questions in the negative, thereby ruling against the petitioner.

Petitioner is now before this court seeking to set aside the award of the Special Board on the grounds that (1) the Special Board did not resolve the questions before it; (2) the Special Board resolved a question not before it, and therefore exceeded its jurisdiction, and (3) the Special Board undertook to interpret a court order which was not properly before it. Respondent Santa Fe contends that this court does not have jurisdiction over this matter, and

that even if jurisdiction were present, this award is not the proper subject of judicial review.

[1] The court agrees with the respondent that it does not have jurisdiction to review an award made by a special board of adjustment. Petitioner claims jurisdiction under 45 U.S.C.A. § 153, First (q). However, this provision delegates limited judicial review to the United States district courts only with respect to the National Railroad Adjustment Board and its enumerated divisions. There is no authorization here to review awards made by special boards.

A subsequent section of the Railway Labor Act authorizes the establishment of special boards by voluntary agreement. 45 U.S.C.A. § 153, Second. This provision sets out the administrative and procedural guidelines to be observed by a special board and specifies that its awards shall be final and binding on the parties. Judicial review is not authorized. The legislative history of this section indicates that Congress authorized special boards as a voluntary procedure to expedite the settlement of minor disputes, thereby alleviating the tremendous backlog of matters pending before the National Railroad Adjustment Board. 1966 U.S. Code Cong. and Adm. News, p. 2285.

Neither case law nor the legislative history of the pertinent provisions of the Railway Labor Act provide a basis for the jurisdiction of this court to review the award made by Special Board of Adjustment No. 605.

[2] Furthermore, even if this court were to find jurisdiction, the limited scope of review over awards made by the National Railroad Adjustment Board would preclude review of this case. Review is authorized only where the Board fails to comply with the requirements of the Railway Labor Act; or where the Board fails to confine itself to matters within the scope of its jurisdiction; or for fraud or corruption by a Board member. 45 U.S.C.A. § 153, First (q). Nothing in the pleadings indicates that Special

Board of Adjustment No. 605 has committed any of these transgressions. Petitioner submitted two specific questions to the Special Board for resolution and, in due course, received two specific answers. It appears that petitioner disapproves of the Board's rationale, contending that the Board reached its result by consideration of a matter not properly before it.

[3] The conclusions reached by the Special Board are clearly within its competency, as they directly and unequivocally answer the questions submitted by petitioner. It would be improper for this court to inquire into the reasons upon which the Board based its conclusions. Neither arbitrary nor capricious conduct by the National Railroad Adjustment Board are grounds for judicial review under the statute cited by petitioner; these grounds were in fact proposed, considered and rejected by the draftsmen of the statute. 1966 U.S. Code Cong. & Adm. News, p. 2287. This court must further observe that the United States Supreme Court has established as a principle of national labor policy that the federal courts should decline to review the merits of arbitration awards rendered under collective bargaining agreements. United Steelworkers of America v. American Mfg. Co., 363 U.S. 564, 80 S. Ct. 1343, 4 L. Ed. 2d 1403 (1960); United Steelworkers of America, AFL-CIO v. Warrior & Gulf Navigation Co., 363 U.S. 574, 80 S. Ct. 1347, 4 L. Ed. 2d 1409 (1960); United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960).

It is therefore ordered that the motion for summary judgment is hereby granted, and the cause is hereby dismissed with prejudice.

SUPREME COURT, U. S.

SEP 18 1969

JOHN F. DAVIS, CLERK

No. 429

In the Supreme Court of the United States

OCTOBER TERM, 1969

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES,

v. *Petitioner,*

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY and SPECIAL BOARD OF ADJUSTMENT NO. 605,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1969.

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Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals for the Seventh Circuit, Appendix C to the Petition, is reported at 410 F.2d 520.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Do United States District Courts possess jurisdiction—either under Section 3, First (q), of the Railway Labor Act, 45 U.S.C. §3, First (q), or Sections 1331 and 1337 of the Judicial Code, 28 U.S.C. §§ 1331, 1337—to review awards of arbitration boards created pursuant to private contracts between parties subject to the Railway Labor Act?

STATUTES INVOLVED

The statutes involved are adequately set forth in Appendix A to the Petition.

STATEMENT OF THE CASE

In most material aspects, the Statement of the Case is adequately detailed in the Petition. There is, however, one exception—of critical significance.

In the first sentence of the Petition, it is represented that the Court of Appeals found that "[F]ederal courts do not possess jurisdiction to review the lawfulness of awards issued by special boards of adjustment *created under the Railway Labor Act* to resolve disputes arising out of the interpretation and application of collective bargaining agreements." [Emphasis added.]

This is a misconception which is restated again and again throughout the Petition; indeed, it has plagued petitioners since the onset of this litigation. Special Board of Adjustment No. 605 was not a statutory board created pursuant to the Act. It was purely a creature of contract between

the parties, to which the review provisions of the Railway Labor Act are wholly inapplicable. No mention of the Railway Labor Act was made in the February 7, 1956 Agreement which created it, except insofar as that Act affected the duration of the Agreement.

Although Board No. 605 was formally styled a "Special Board of Adjustment", it was distinct from boards established under Section 3, Second, of the Act. The latter—"Public Law Boards" in industry jargon—are created and delimited by that Section. Board No. 605 was actually a "Disputes Committee" under the February 7 Agreement. It was termed "Special Board of Adjustment No. 605" by the National Mediation Board when it appointed an arbitrator. This title in no way altered the character of the "Disputes Committee." Certainly, it did not transform a private arbitration board into a governmental agency.

ARGUMENT

I. NO CONFLICT OF DECISIONS EXISTS

The principal conflict alleged with the decision below is *International Association of Machininsts* v. *Central Airlines, Inc.*, 372 U.S. 682. There the parties agreed to establish what in the airline industry is known as a "system board of adjustment" to resolve grievance disputes. Their agreement expressly stated that the board was established in compliance with Section 204, Title II of the Railway Labor Act. As noted above, the February 7 Agreement did not allude to the Act in any way in providing for a Disputes Committee.

The absence of any conflict with *Central Airlines* was recognized by the Seventh Circuit. It observed:

> "That . . . [Central Airlines] . . . . is inapplicable to the dispute before us is apparent if we keep in mind the fact that Board No. 605 is a contractual and not a statutory board. In Central Airlines, the parties agreed to establish a system board of adjustment to resolve grievance disputes. The Supreme Court, in ruling that awards of an airline system board of adjustment can be enforced in a federal court, made it clear that agreements to submit matters to these boards were not permissible but mandatory. . . .
>
> "In the case at bar, neither party was directed by the Act to establish the 'Disputes Committee.' This committee was created by contract and was not a statutory board like that involved in Central Airlines." 410 F.2d at 523.

The other decisions advanced by petitioner as conflicting are similarly inapposite, since they involve awards of boards created by and subject to the Railway Labor Act.

II. THERE IS NO IMPORTANT QUESTION OF LAW

Although the Petition proffers the conclusory statement that the lower court's decision "presents substantial and important questions as to the interpretation of the Railway Labor Act . . .," analysis of the decision reveals that there is no material conflict with other decisions and there is nothing in the Petition to support its bare conclusion that the case presents a question of general importance. The fact is that no federal question of substantial consequence is involved.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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